United States Court of Appeals

for the Second Circuit

APPENDIX

74-1550

74-1550

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX
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UNITED STATES OF AMERICA

vs. 73 Cr. 1099

CARMINE TRAMUNTI, et al.

January 14, 1974
10 a.m.

(Hearings continued.)

(Conferences were held on other matters in the robing room.)

(In open court.)

THE COURT: I understand that someone is to make a motion for a continuance.

Mr. Lopez? Mr. Siegal?

MR. SIEGAL: If your Honor please, at this time on behalf of Mr. Tramunti, I move to dismiss the indictment or, in the alternative, for a severance or, in the alternative, for a change of venue, based upon an article that appeared in the Sunday News, January 13, 1974, which absolutely and unequivocally denies to my client any opportunity of getting a fair trial.

Not only do we have facts which are untrue stated in this article, but we have quotes of Mr. Paul Curran.

"Curran said Tramunti was 'the top man and prime mover of this conspiracy.'"

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Further, "Tramunti, reputed head of the Thomas (Three-Finger Brown) Luchese crime family, was described by U. S. Attorney Paul Curran as a member of the 'highest echelon of organized crime.'

"The underworld chieftain, who is now serving three years for criminal contempt for lying to a Brooklyn rackets grand jury, is charged with conspiracy in the federal case." ... "The underworld lord was grabbed last April 16 in roundup of 86 alleged dope dealers by city and federal authorities which they called Operation Shamrock.

"Eventually, 43 persons were indicted on city or federal charges or both. Tramunti is charged with conspiracy to distribute multi-kilogram quantities of heroin and cocaine, as well as actually distributing it. The mob boss could get up to 15 years in prison and be fined up to $20,000.

"Other alleged mobsters scheduled to go on trial include Louis (Gigi the Whale) Inglese and Thomas (Moe) Lentini, who allegedly tried to murder the chief prosecution witness in another dope case.

"Inglese, Lentini and other defendants had been told that the witness, Dolores Martinez, would testify against them.

"The two also allegedly tried to bribe two cops

with $100,000 to destroy the evidence in the case. State charges of conspiracy to murder were filed against them."

I submit most respectfully, if your Honor please, that there is no way in the world that the defendant Tramunti can obtain a fair trial, regardless of the inquiries that might be made of any prospective jurors, especially when the newspaper quotes the words of the United States Attorney himself, who is seated here in charge of this prosecution.

I most respectfully ask your Honor to permit this newspaper clipping to be marked as an exhibit in this case.

THE COURT: It will be marked.

MRS. ROSNER: I have an application as well, your Honor.

I would join in Mr. Siegal's motion, and I would note, your Honor, I think we have proof by statistics, that the Sunday News is the newspaper with the largest single circulation in the entire world, and I think that in view of the fact that the defendants on January 7th consented to have this jury sequestered to avoid the possibility of the jury being infected with publicity during the course of the trial, it is most prejudicial to have this news leak on the eve of trial.

In addition, your Honor, we would move for a continuance on the ground that the 3500 material which has been delivered to us is unusable.

As your Honor knows, the government turned over duplicates of recordings which purported to be debriefings of some of the government's main co-conspirator witnesses. I took charge of having them duplicated for co-counsel. The copies, the last of them, were delivered to my office Friday evening at 6:30. Upon inspection, those tapes are in large part inaudible and have many gaps, your Honor. It would be necessary to subject them to a process of cleaning up to bring out the voices of the respective parties to first make them audible, and it would then become necessary to make transriptions of them, a process which, your Honor, from past experience with tapes of this kind, would consume the better part of a month.

In its present state, this material is absolutely unusable. The government had made no effort to clean them up for trial themselves. They placed the burden on counsel.

We have endeavored to do everything as expeditiously as possible, and we have not been able to be ready for this trial, and I request a continuance on that further ground.

MR. FISHER: If your Honor please, in addition to the two grounds mentioned by previous counsel, I urge as a third ground that your Honor grant a substantial continuance to allow for the filing of motions directed against the copied Capra taps. If your Honor please, as I understand the government's position, it is the uncontradicted view of the Second Circuit, expressed again and again and again in its most recent decisions, that the taint hearings be held pre-trial. Now, if your Honor please, the government has stated that perhaps informally it would be its position not to go into the legality of the taps but rather to question the expent of the exploitation and legality.

In any event, I call your Honor's attention to United States against Birrell, Tortelli and others, all criticizing judges for having followed Judge Pollack's procedure, namely, having the hearings post-trial. I would ask for a hearing pre-trial as well as to allow for the preparation of usable 3500 material.

It is inconceivable and impossible, your Honor, to confront a witness with tape recordings of this kind. This trial would become a shambles. You just can't find the sentence on a tape without spending 15 or 20 minutes trying to locate it, and then you have to hear a sentence or two

before there and maybe a sentence or two after the one you want.

When the government has tapes and the governme wants to use the tapes, there is time to prepare cleaned-u copies. There is time to prepare transcripts. The time runs into months. When the defendant gets it, he is given a week.

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I simply, most respectfully, your Honor, submit that it is the right of the defendants to clean the tapes and have the time to prepare the transcripts.

THE COURT: I assume everybody joins in the motions that have been made. If anyone doesn't want to joi stand up.

All right.

MR. STOTSENBURG: Your Honor, if we have further motions, should we hold them?until

THE COURT: For right now, yes.

Can somebody give me the clipping from the paper

MR. SIEGAL: Yes, your Honor.

THE COURT: Mark it as a Court's exhibit.

xxx

(Court's Exhibit 1 was marked for identification.

MR. CURRAN: Your Honor, with the Court's permission, I would like to respond briefly to the motion by counsel for Mr. Tramunti with respect to the specific article

and I think Mr. Phillips will respond to the motions regarding the taps.

Before doing that, your Honor, I would like to inquire of the Court, if I may, if all the defendants and counsel are present. The government is not entirely certain of that.

THE COURT: Just for purposes here of making sure that everyone is here, would the clerk call the roll?

THE CLERK: Is counsel for defendant Tramunti here?

MR. SIEGAL: Here.

THE CLERK: Counsel for defendant Inglese?

MRS. ROSNER: Here.

THE CLERK: Counsel for defendant Mamone?

MR. ELLIS: Here.

THE CLERK: Counsel for defendant Joseph DiNapoli?

MR. LOPEZ: Here.

THE CLERK: Counsel for defendant Frank Pugliese?

MR. ELLIS: Here.

THE CLERK: Defendant Joseph Ceriale?

MR. WARNER: Here.

THE CLERK: Defendant John Gamba?

MR. KING: Here.

THE CLERK: Defendant Vincent D'Amico?

MR. ROSENBAUM: Here.

THE CLERK: Dominick Lessa?

MR. SALCO: Here.

THE CLERK: Defendant Benjamin Tolopka?

MR. RICHMAN: Here.

THE CLERK: Defendant Marchese?

MR. CURLEY: Present.

THE CLERK: Counsel for defendant Frank Russo?

MR. DOWD: Present.

THE CLERK: Defendant Al Greene?

MR. SCHWARTZ: Present.

THE CLERK: Defendant William Alonzo?

MR. SUNDEN: Here.

THE CLERK: Defendant Hattie Ware?

MR. PANZER: Present.

THE CLERK: Defendant John Springer?

MR. SIEGEL: Here.

THE CLERK: Defendant Henry Salley?

MR. SEGAL: Here.

THE CLERK: Defendant Mary Jane Salvani?

MR. STOTSENBURG: Here.

THE CLERK: All present, your Honor.

MR. CURRAN: Your Honor, might I inquire of the

Court if all the defendants who are supposed to be here are here?

THE COURT: Is there anybody whose client is not here?

MR. ROSENBERG: Yes, your Honor. My client is not here. He had to go to a funeral. I spoke to him on Sunday. He indicated to me, he said that as soon as he gets through he will be back. There is no doubt he is going to be here for the afternoon.

MR. SALCO: Your Honor, the defendant Dominick Lessa is not present. I spoke to him yesterday and this morning early, giving him the courtroom and the floor. I do expect him momentarily. The conversation I had with him was about 9:00 o'clock this morning, the last conversation.

THE COURT: All right.

MR. STOTSENBURG: Your Honor, the defendant Mary Jane Salvani is not present and I can't offer the Court an explanation except to advise the Court that from my conversations with a close friend of hers, I'm concerned, frankly, about suicide. The estimation of so many weeks in this trial and the problems that this young lady has faced have already been made known to your Honor, and your Honor has appointed a psychiatrist. We haven't gotten that accomplished yet, either, your Honor.

THE COURT: Wasn't she supposed to be examined earlier?

MR. PHILLIPS: We had arranged for her to be examined at 8:00 o'clock last Monday morning, your Honor, and I don't know why she was not examined, why she did not appear for that examination, what the circumstances are, but it was through no fault of the government that she was not examined at that time.

MR. STOTSENBURG: Well, I had advised your Honor's clerk on the 21st of December, the first day I saw my client, of my request in that regard, and the clerk said she would get back to me. I guess she got sick then. So when I got to the court I indicated my request in a formal fashion. We got onto it as quickly as possible, but it wasn't possible for my client, I guess, to get down that Monday morning.

However, I did discuss it with the doctor, and we have not yet been able to get the matter accomplished.

MR. PHILLIPS: Your Honor, the government would inquire when Mr. Stotsenburg last spoke with his client.

MR. STOTSENBURG: I spoke with her last week, your Honor, and I indicated to her that your Honor had appointed a psychiatrist, and she agreed that it was in her best interests to be examined. She wanted to be examined,

and I thought we were going to get her to the psychiatrist.

Since that time, I have tried to reach her particularly through one friend very close to her. I talked to that woman last night, and I, after sending an initial letter, felt that I had a duty to use this woman to try and reach her rather than to have letters floating around.

I was advised that she left word to try and reach her.

THE COURT: Well, under the circumstances I think it appropriate for a bench warrant to be issued for Mary Jane Salvani, and I direct the clerk to issue a bench warrant.

MR. CURRAN: Your Honor, briefly in response to Mr. Siegal's motion, I have not seen the newspaper article to which he refers, and indeed I read the Sunday News yesterday, and I didn't see the article in my copy. I have had no conversations with any reporters on this case except a very brief conversation on Friday, when an inquiry was made of me by Mr. Flynn of the Daily News. One question was asked about how many defendants would be going to trial, and I responded with an approximate number, which was my best estimate at that time.

The reference in the article to top man and prime mover, your Honor, I did indeed use that language when this

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defendant, Carmine Tramunti, was arraigned before the Magistrate on October 4, 1973. He was then in custody, and the statement about this defendant was somewhat extensive, because it was in support of a bail application, which was then being made in the amount of $300,000, and the Magistrate fixed $250,000 at that time.

Mrs. Rosner in her application threw in the words "news leak." I suggest to your Honor not only is there no evidence of a news leak but there is in fact no news leak.

On the law, your Honor, I think it is quite clear that first, Mr. Siegal overestimates the notoriety and the importance and the apparent household-word nature of his client. I think the test is, your Honor, whether an impartial jury can be selected.

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First, I think we have to determine whether any of them read this newspaper story. If they did, that is one thing. If they haven't that is another.

I think the test is whether the people are familiar with the defendants in this case and familiar with their reputation and records. I think at the appropriate time, when the jury is being questioned by the Court, any possible problem of prejudice will become crystal clear, and your Honor can then take whatever action you deem appropriate.

But there is, I am sure, on this record no basis whatsoever for the kind of relief that is being sought as a result of this one news story.

The motion, we submit, should be denied in all respects.

Mr. Phillips, your Honor, would like to deal with the other two applications, the 3500 material and the taped material.

THE COURT: All right.

MR. PHILLIPS: Your Honor, I have articulated the government's position last week, at the pre-trial conference, with respect to both of these applications.

With respect to the 3500 material, the record should reflect that the tapes Mrs. Rosner makes reference to were delivered to her associate, Mr. Oppenheimer, on January 2nd and 3rd and were returned to our office the beginning of the following week, after copies were made of them, and essentially what she refers to are debriefing sessions with Mr. Stasi and Mr. Barnaba.

I have listened to almost all of the debriefing sessions with Mr. Stasi, and they are very clear.

With respect to the 3500 material and its timeliness, as your Honor well knows, the law does not require the government to deliver or turn over 3500 material until

the completion of the witness' direct examination. Your Honor, on November 13th directed the government to turn over the 3500 material the evening before. We have turned over this 3500 material over a week, in fact, approximately ten days in advance of trial.

With respect to the taint hearing, our position as has been stated before to this Court, is that since the government's case underlying this indictment is in no way related to the investigation involved in the Capra case and the wires involved there, our position is that if counsel are asking for a taint hearing such a taint hearing should be conducted at the completion of the trial, because we do not yet know what the government's evidence will be.

In the Birrell case, the government conceded in the argument to the Court of Appeals as well as to the District Court Judge that the entire government's case rested on the validity of the seizure of certain documents from a suitcase in that case, and if the seizure was deemed to be illegal, then the entire government's case would be the results of the fruit of the poisonous tree.

Here, even were this Court or any court to determine that the wiretaps involved in the Capra case were illegal, be it because they were not minimized or because they were not based on probable cause, the government's

position would still be that since our evidence here did not relate or was not obtained as a result of leads gained from those wiretaps, it would not be tainted, and so we submit that under the circumstances this case is different and inapposite to the Birrell case, and I submit that the Court of Appeals has modified its position in the Birrell case.

MR. FISHER: If your Honor please, Mr. Phillips misinterprets Birrell. I personally participated in that trial. I think Mr. Phillips has the wrong Birrell case. There are many. I think, also, he does an excellent soft-shoe around the 3500 issue as well.

The fact that they turned over the tapes is one thing. Your Honor, we can't use them in their present state. We have to be able to use them when and if these witnesses take the stand, and we have to have those before cross-examination can begin.

MR. PHILLIPS: Your Honor, I just want to respond to the matter of the Birrell case.

MR. FISHER: We are referring to two different cases.

MR. PHILLIPS: I authorized the seizure of the documents from the suitcase.

MR. FISHER: I am talking about the 1966 case.

THE COURT: All right. Let me read the Birrell

case and let me figure out what it says. I appreciate your help, but I will do my own work in that connection.

All right. There are certain other motions that were left outstanding last week. There was a motion by the defendant Mamone and a motion by the defendant Pugliese to be severed. Those motions are denied.

There is also a motion by the defendant Dominick Lessa for severance. That motion is denied.

There was a motion made by the defendant Springer to suppress evidence seized on the arrest. Is counsel for Springer here?

MR. MARTIN SIEGEL: Yes.

THE COURT: The hearing on the motion by the defendant Springer will take place at 2:30 this afternoon.

MR. SIEGEL: Your Honor, if it may please the Court, I have had a conversation with Mr. Fortuin, and I explained to him a problem I had. I just learned about it this morning.

It is the defense's position that we wish to call a witness in our behalf on the issue of the motion to suppress. However, this witness will be unavailable until approximately tomorrow or Wednesday. We therefore ask for a continuance of the motion until Wednesday.

THE COURT: Counsel, I am quite sure that before

your witness takes the stand the government will go forward with their case. Can we take that this afternoon?

MR. SIEGEL: Yes; we can, your Honor.

THE COURT: Now, the motions made this morning--I am reserving decision on all of them, and I assure you that I will read the Birrell case, among others.

We do still have open the motion made by defendnat Di Napoli to suppress certain evidence. Mr. Lopez, on Friday last, he requested an opportunity for oral argument on that, and so did the government.

MR. LOPEZ: Yes, your Honor.

THE COURT: I understand that some of your co-counsel may wish also to argue.

MR. LOPEZ: Yes, your Honor.

THE COURT: It is my belief that your co-counsel really has no standing in connection with that motion. However, as a matter of discretion, I will hear argument from you and your co-counsel and Mr. Phillips tomorrow morning, starting at 10:00 o'clock.

MR. LOPEZ: Thank you, your Honor.

THE COURT: Now, we have some --

MRS. ROSNER: Judge, I have one other matter which should be brought to the Court's attention.

Among the tapes which the government turned over

were at least two recorded conversations between my client and co-conspirators after the date of the indictment in this case. Ordinarily, I would move to suppress those statements pursuant to United States against Massiah. However, the government has represented to me that they do not intend to offer them, and it is based on that representation that I have not moved to suppress.

THE COURT: I assume they will not.

All right. We still have some housekeeping chores to take care of, which I will take care of with Mr. Lopez.

Yes, Mr. Stotsenburg?

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MR. STOTSENBURG: Your Honor, there are various motions outstanding for the defendant Salvani. I would also like to ask your Honor on behalf of the appointed counsel, to consider the following:

I understand there is an estimate that this trial may take as much as eight weeks. Those of who will be appearing here will be doing so in disregard of other business and the working hours of all our practices.

May we, say, after the lapse of every two week period, submit interim vouchers to start them on the long and weary way to the prospect of being paid?

THE COURT: I hope it is more than just a potenti-

ality. Yes. You can submit them every two weeks.

MR. STOTSENBURG: Your Honor, of course, I join on behalf of the motions just made by Mr. Siegal, Mrs. Rosner and Mr. Siegel, but I think Mr. Siegal made a very good point. My client was also referred to as a mobster. On this record there is no basis to submit a motion requesting a severance or a change of venue. However, I think it is incumbent upon this Court to hold an evidentiary hearing rather than just take the record of this particular news clipping, and I would ask your Honor to issue subpoenas to the Daily News, on the authority of United States against Spiro Agnew in order that we may get to the bottom of this matter, and likewise I am sure your Honor would have the evidence of Mr. Curran and such others of his staff who may appear in any way to be responsible for this.

This is a very serious development: to get up in the morning and suddenly find your client called a mobster.

I have other comments. It is not related to that. I think Mr. Curran wants to reply.

THE COURT: All right. I don't believe it is necessary. I have denied the motion.

MR. STOTSENBURG: With respect to Mrs. Salvani, of course your Honor knows that there are motions for suppression that are outstanding. Your Honor, I understand, has

not decided whether to hold a hearing or not.

I also want to point out to the Court that I have not been given all the tapes. I got three this mornin and one went back to Mr. Fortuin, and I asked Mr. Fortuin again for it, and he said, "It's not my business. It's somebody else's."

I don't have the material, and I'm not prepared. I spent the weekend listening to them, and I mean really spent the weekend, because I got the first three tapes on Friday and you can't get the information out of that materia It is inaudible. Apparently Mr. Phillips retained a clear copy for himself.

So in terms of being prepared for trial, we just can't do it.

Outside of the tape handed back to Mr. Fortuin, we just don't have those.

MR. CURRAN: Your Honor, we will try to work out whatever housekeeping issues counsel are concerned with. As far as the tapes are concerned, we don't have his client here, either, and we will want to get onto the subject of that bench warrant.

MR. STOTSENBURG: I want your Honor to understand that I didn't waive any timeliness issues I might have.

THE COURT: Mr. Lopez, we are going to have to

switch around the seating just a little bit. From where I sit, it looks terribly crowded, and we do have or may have a problem with security that the marshals and you and I will work out.

MR. LOPEZ: I hope I will survive with co-counsel that being worked out.

May I, in the presence of co-counsel address myself to certain matters?

Could it be all right if during the course of the trial -- certain attorneys have asked me this question -- if they have other attorneys in the case cover for them, in the event that an attorney has another matter, a sentencing, for example, before a federal judge or a state judge? Can his client specifically consent to that procedure, and would your Honor in his discretion exercise it in behalf of the defense attorney?

THE COURT: Yes.

MR. LOPEZ: Some of the defense counsel have asked for a blackboard to be available in this courtroom when necessary. I suppose that can be arranged.

THE COURT: We will make one available. Right now we have no place to put it, so I don't know how we are going to make that available.

MR. LOPEZ: Your Honor, Mr. Rosenberg has an

application with regard to Pugliese.

MR. ROSENBERG: It has already been denied. However, your Honor, while I am on the subject, I don't doubt Mr. Curran's statement to the Court. Mr. Curran got very excited about my calling a witness a stool pidgeon. Nevertheless, while I don't doubt the statements he made, there was a very famous lawyer kicked out of the state of New Jersey and told not to come back because he talked to the newspapers. May we have the same admonition with respect to the government?

This case is bad enough without them giving out news leaks and things coming into the newspapers. Even though Mr. Curran takes no responsibility for it, it is there. I didn't tell it to them, Judge. Can we at least have the admonition from the Court that, whether they did it at this time or not, that they don't do it any more?

THE COURT: I don't think an admonition is required. I have known Mr. Curran for a number of years, and I am quite sure that he will conduct himself and his office quite properly.

You have another problem, Mrs. Rosner? Do you want to take care of it now?

MRS. ROSNER: Your Honor, yes.

I would like for an opportunity to have the Court

review a pre-sentence report of Inglese, which was prepared in connection with a sentencing in a bribery case in this court. I have my client with me, and he will consent to that.

THE COURT: Mr. Inglese, do you consent to my reviewing it before anything that has happened?

DEFENDANT INGLESE: Yes.

THE COURT: All right. Do you have any objection, Mr. Curran?

MR. CURRAN: No objection, your Honor.

THE COURT: All right.

MR. FORTUIN: Your Honor, one small matter:

There were various orders last week granting further particularization with respect to various defendants, and I wnated to indicate how they have been resolved.

It is very brief.

You indicated that the government should supply, with respect to overt acts 11, 12 and 14, whom the heroin was received from. We had previously supplied that in the government's supplemental bill of particulars, which had been filed in late December.

With respect to the defendnats Anthony Loria, Frank Pellegrino, William Alonzo and Mary Jane Silvani, against whom no overt act or substantive crime was alleged,

the Court's order was to the government to submit particul as if an overt act was alleged. Loria and Pellegrino have been severed. With respect to Alonzo, the particular would be that in or about the month of February 1972, the defenda William Alonzo received two ounces of heroin from Harry Pannirello.

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THE COURT: Yes. I am going to direct at that point that it be done formally.

MR. STOTSENBURG: May I state that that was not the case --

THE COURT: I was there. I asked Mr. Fortuin if he would set forth, as if he alleged an overt act, relating to Mary Jane Silvani.

MR. FORTUIN: I understand that, your Honor, but we will do that.

MR. SUNDEN: Judge, with regard to Mr. Alonzo and the particularization offered by Mr. Fortuin, I would ask for further particularization a more particular date, an accurate date, if possible, and state that this is not the type of particularization thatis sufficient to prepare a defense.

THE COURT: I will be faced with that problem as to the exact date and time. I have denied the requests of other defendants, and I will deny your request.

Is there a place involved?

MR. FORTUIN: Yes. That would be 1380 University Avenue.

THE COURT: 1380 University Avenue.

MR. FORTUIN: In the Bronx.

THE COURT: All right.

Now, does everybody understand what we have left? The Springer motion comes on at 2:30. Tomorrow we will have oral argument on the Di Napoli motion. Tomorrow most likely I will take care of the other motions that were made today.

If you are interested in the Springer motion, you can stay here. If not, be back here tomorrow morning at 10:00 o'clock.

MR. PANZER: Your Honor, can we get some idea of when we are going to start? The defendants are here every day, and I would like to give my client an indication of when he has to be here to actually start the trial.

THE COURT: Knowing the proclivities of lawyers being prolix, I would guess that we will not start tomorrow. All right?

MR. PANZER: May my client be excused?

THE COURT: All clients who are not in custody may be excused tomorrow.

(A luncheon recess was taken.)

AFTERNOON SESSION 2:30 p.m.

THE COURT: Proceed, gentlemen.

MR. FORTUIN: The government is ready, your Honor.

MR. SIEGEL: The defense is ready, your Honor.

THE COURT: Call your first witness.

MR. FORTUIN: The government will call Marty O'Boyle.

...

M A R T I N O' B O Y L E, called as a witness by the government having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FORTUIN:

Q Mr. O'Boyle, how are you employed?

A I am assigned to the Major Investigation Section of the Narcotics Division within the Police Department.

Q Which Police Department is that?

A New York City Police Department.

Q How long have you been employed by the Police Department?

A Approximately 12 years.

Q Generally, what are your duties?

A I am assigned to supervise a team within the Narcotics Division.

Q Were you on duty on the evening of December 3, 1973?

A I was.

Q Did there come a time when you attempted to execute a federal arrest warrant for a John Springer?

A There did.

Q I show you an exhibit previously marked Government Exhibit 1 which is a Xerox copy of a warrant.

Counsel has stipulated we can use a Xerox.

Do you recognize that?

A Yes, I do.

Q What is it?

A It is a copy of an arrest warran: which Detective Wysocki had in his possession on the night of December 3, 1973.

Q Can you tell us what you did then on the evening of December 3, 1973?

A Yes.

I arrived at 3139 New England Throughway with three detectives from the Major Investigation Sectin.

I rang an outer bell at that loc tion.

Q Can you identify the detectives who were with you, please?

A Yes. Detective Albert Cassella, Detective Joseph

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Wysocki and Detective John Sheehan.

After I rang the doorbell, the outer door was opened by a youth. I entered and began to ascent the stairway. As I was ascending the stairway I noticed a female standing on the second floor landing in front of a door.

As I continued to ascend the stairway I removed my shoeld from my pocket and displayed it to the female and also announced to her that I was a police officer.

Q How did she respond, sir?

A She didn't answer.

Q Did she do anything?

A Yes. She did. After I asked her if John Springer was present she opened the door behind her and spoke briefly with a male who was standing inside.

Q Could you see the male that was standing inside?

A Yes, I could.

Q Did you recognize him?

A I did.

Q How could you recognize him?

A Well, prior to this occasion I was involved in a particular operation and John Springer was one of the prisoners that was arrested during this operation.

Q Did you see anything else?

A Yes, I did.

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Q What did you see?

A I saw John Springer standing by a-- what appeared to be a table or a counter-top.

I also saw aluminum foil on the counter-top.

I also saw a white powdery substance on the counter-top.

Q Okay.

And what happened after you saw these things?

A The female who was standing in front of the door as I was ascending the stairway and who spoke briefly with John Springer then closed the door and remained in front of the door on the landing.

By this time I had reached the door. I informed the female that I had a warrant for the arrest of John Springer, and I asked her to open the door.

Q What did she do?

A She didn't reply but she didn't open the door.

Q What did you do?

A I then directed her to move away from the door, and with the assistance of Detective Wysocki, I forced open the door.

Q And what happened after you forced open the door of the apartment?

A I entered the apartment, accompanied by Detective Wycocki. Detective Wysocki, who had moved into a room on my right after I entered, called to me, stating that he had located John Springer.

Q Okay.

And thereafter did you follow him into that room?

A Yes, I did.

Q And what did you see?

A I saw John Springer inside the bathroom. John Springer was directed to leave the bathroom and he was placed under arrest in the hallway directly outside the bathroom.

Q Okay.

And what happened after that?

A Shortly thereafter, Detective-- in fact, directly after that, I turned around and I noticed--

MR. SIEGEL: Objection, your Honor. I don't believe the answer is responsive to the question Mr. Fortuin placed to the witness.

THE COURT: Let's hear the question.

(Question read.)

THE COURT: Well, I think it is responsive.

Go ahead.

A I turned around, and I noticed the female standing by the table that contained the aluminum foil and the white powder. She was moving her arms over the table and attempting to knock this substance to the floor.

I directed her to move away from this table and to remain in the living room, which she did.

Q Okay. And then what next happened?

A Detective Cassella and Detective Sheehan entered

the apartment. Detective Sheehan was assigned to guard John Springer while Detective Cassella and Detective Wysocki recovered the aluminum foil and the white powder from various locations.

Q Well, from what locations did they recover it, precisely?

A It was recovered from the table-top, from the floor near the table-top, from the-- from a table near this table-top that I have mentioned, another table, from the floor near the bathroom door.

Q Okay.

Did you open up any drawers?

A No, we did not.

Q Did you move any rugs?

A No, we did not.

Q Did you move any furniture?

A No, we did not.

Q Did you look in any other rooms inthe apartment?

A Yes.

Q Was anyone else present in any of the rooms?

A Yes. There was a female present in another bedroom. There was a few children present in the living room.

Q Did you enter that other bedroom?

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A Yes.

Q Were any of the items that you seized that evening taken from that bedroom?

A No.

Q Now, do I understand there were two bedrooms?

A That's correct.

Q One of them contained this woman and the other contained John Springer?

A That's correct.

Q Did you search that bedroom?

A I looked in the bedroom, yes.

Q Were any of the items that you seized that evening taken from that bedroom?

A No, sir.

Q So that all the items that you seized were taken from the table, the vicinity of the table or the bedroom where the defendant was arrested, is that correct?

A That's correct.

Q What happened after that, after you handcuffed John Springer and put him under the guard of Detective Sheehan, I believe, in the bedroom?

A Shortly thereafter, Detective John Sheehan called me and stated John Springer would like to have a conversation with me. I then entered the bedroom, and John Springer stated that he would like to do something, or words to that effect. I asked him if he would be more specific, and he raised his hand with the five fingers extended and said, "With two zeros in the end."

I again asked him if he would be more specific as to what he meant, and he stated that he would rather not- he was afraid of an additional charge. I then left the bedroom.

Q All right. Did there come a time when you went back to the bedroom?

A There did.

Q How did that happen?

A Detective Sheehan again called to me and said that John Springer would like to speak to me. I returned to the bedroom, and after some time elapsed, John Springer said to me, "I trust you," and with that he indicated that he would like to pay $1,000 if I would forget the junk.

Q Well, how did he indicate that? What did he say,

if you remember, or paraphrase it?

A I can't quote what John Springer said. I recall that he stated he would like to pay $1,000 if I were to forget the --

Q What did you say and what happened after that?

A I informed him that I was willing to go along with that on two conditions: one that he, of course, -- anybody else in the apartment would not be allowed to leave the apartment to get the money, and, two, that the other detectives would have to be in the room, as they were party to this seizure.

He answered that as far as leaving the room or the apartment was concerned, that wasn't necessary, because the money was present. As to the second condition, he stated that he would rather not have too many witnesses in the room and to please leave the other detectives outside.

When I told him that the other detectives would have to be present, he agreed, and I called the other two detectives into the bedroom.

Q Okay. What happened after the other two detectives joined you?

A John Springer called the female, now identified as Ella Springer, into the bedroom, and he had a whispered conversation with her. She then left the bedroom, followed

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by Detective Casella. She returned shortly, and she had a brown paper bag in her hand. She left this bag; she place it on the dresser, the bedroom dresser and said, "There it is," or words to that effect.

John Springer then indicated that the bag contained the money. I directed Detective Casella to see wh was inside the bag. Detective Casella picked up the bag and removed United States currency from the bag. I then directed Casella to count the U. S. currency. The money w counted in front of John Springer and the other detectives and it amounted to one thousand dollars.

(Continued on next page.)

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Q Then what did you do?

A I then informed John Springer and Ella Springer that they were now charged, in addition to other charges, with bribery.

Q After you arrived at the apartment and realized that you were also arresting a female as well as a male, did you make any directions to your men?

A Yes, I did.

Q What directions did you give them?

A I directed Detective Casella to call the precinct and request a female police officer to come in order to search the female prisoner.

Q Did you follow this procedure in every case?

A Yes.

Q Whenever you arrest a female you request that a female officer come to search her at the time of her arrest?

A Yes, sir.

Q What time did the policewoman ultimately arrive?

A I believe it was shortly after 10:00 o'clock.

Q And you originally arrived at the apartment at what time?

A 8:15.

Q You were in the apartment from 8:15 until 10:00

o'clock?

A Until shortly after 10:00 o'clock, I believe.

MR. FORTUIN: No further questions.

xxx

CROSS-EXAMINATION

BY MR. MARTIN SIEGEL:

Q Sargeant O'Boyle, you said when you first entered the building you had a conversation with a boy? You entered the outside entrance?

A A boy opened the door.

Q What was his name?

A I don't know.

Q After you proceeded up the steps where did this boy go?

A I don't know.

Q Could you describe this boy to us?

A He was male, black, approximately 12, 10 years old.

Q Do you know if this boy has any relation with the accused, Mr. John Springer?

A I don't know. I had a conversation with John Springer later and I believe he indicated that it was one of his children.

Q You say that after a conversation with this boy you proceeded up the steps?

MR. FORTUIN: That misstates the testimony. He didn't state a conversation, he opened the door.

Q Did you speak to the boy at all when you opened thedoor?

A No.

Q Did any of your brother officers speak with that boy?

A I don't know.

Q Did you hear any conversation going on?

A No, I didn't.

Q You testified that the apartment in question is on the second landing?

A The apartment is on the second floor.

Q After you entered the outside doorway how did you proceed at that point? Did you go up a flight of steps directly in front of the door or was there another entrance up to the apartment?

A After you enter the outer door you go directly up a flight of stairs to the second floor.

Q Was this apartment directly on top of this flight of stairs?

A As you ascend the stairway the apartment is towards the left.

Q How wide is the staircase?

A I don't know.

Q Is it wide enough for two male adults to walk side by side?

A I believe so, yes.

Q Would you say it's a wide staircase or is it a narrow staircase?

A I don't recall.

Q How high a staircase is this approximately?

A Approximately one story.

Q What point on that staircase did you have your first contact with the female identified as Mrs. Springer?

A When I was just about one-third to half-way between the ground floor and the second floor on the stairway.

Q Were you at the lower half or the upper half?

A I don't recall.

Q When Mrs. Springer came down was she facing you?

A She didn't come down.

Q Did she ever enter on the steps at all?

A No.

Q How far did she step away from the doorway of the apartment?

A She remained directly in front of the door.

Q This doorway to the apartment is parallel with

the staircase?

A I don't understand the question.

Q When you reach the top of the steps do you have to make a 90 degree turn to the left to enter the apartment or do you walk straight into the apartment?

A I believe you would be required to make an approximately 45 degree turn to get into the apartment.

Q 45 degree turn?

A To the best of my recollection.

(COntinued on page 460.)

Q When the door is opened, is it opened from the inside out or from the outside in?

A I don't know.

Q On the night in question, when you placed Mr. Springer under arrest, did the doorway open from outside in or inside out?

A I don't know, I forced the door.

Q You forced the door?

A We broke open the door. I don't know whether it opened in or out.

Q You testified that you saw Mrs. Springer standing outside of the door of the apartment; is that correct?

A I did testify to that, yes.

Q You also testified that you saw Mr.Springer inside the apartment at that point?

A That is correct.

Q How far was the door open at this point?

A Approximately halfway.

Q At that point how was the door opened?

A I believe it opened inwards at that point.

Q On which side of the door, as you face it, is the door knob, on the right side or the left side?

A I don't recall.

Q For how long a period of time was that door in

that open position?

A A short period of time.

Q Ten seconds?

A Possibly, maybe less.

Q Possibly even five?

A Possibly, yes.

Q When you made the observation at that point,where were you physically located on the steps?

A I had almost reached the second landing, the second floor landing. As to my position on the steps, I was, I believe, on the last few steps.

I don't know exactly which ones.

Q You say Mr. Springer was standing outside of the door at this point?

A Not at this point.

Q Sergeant O'Boyle, when you made the observation of John Springer, was Mrs.Springer outside or was she inside the apartment?

A She was leaning into the apartment at that time.

Q I don't think I understand your answer.

A Mrs. Springer had opened the door and she was in conversation with John Springer inside. I believe she was part way out --

Q Officer, not what you believe. What do you

remember as occuring at that time?

A Mrs. Springer opened the door and had a conversation with John Springer inside.

Q I am somewhat confused as to the times Mrs. Springer was outside the apartment.

The point of time I am referring to is when you are ascending the steps and you say you had a conversation with Mr. Springer, your first conversation with Mr.Springer, at that point was the door opened?

A No, the door was closed.

Q Then that conversation with Mr. Springer terminated, is that correct?

A That is correct.

Q Are you telling us that you had a second conversation with Mr. Springer?

A Later, yes.

Q Prior to entering the apartment?

A Yes.

Q And during the first conversation and the second conersation, is that when the door of the apartment was allegedly opened?

A That is correct.

Q You say it was in the area of approximately five seconds?

A Between five and ten seconds, approximately.

Q When you looked in the apartment what else were you able to see besides John Springer?

A I saw a table directly in front of John Springer.

Q Where was Mrs. Springer at this time?

A She had opened the door and she was standing by the door in conversation with John Springer.

Q So her body was,in effect, obstructing part of that entranceway, the open entranceway?

A It may have been obstructing part of that entranceway, yes.

Q So that left a portion then, not the one-half, as you testified to, but a small portion of that apartment visible, is that correct?

A No, that is not correct.

Q Well, the entranceway was somewhat obstructed by Mrs. Springer?

A It was partially obstructed, yes.

Q Sergeant O'Boyle, let me ask you again-- well, I withdraw the question.

Was Mrs. Springer standing as you face the door on the left side of the door or the right side of the door during this conversation?

A As you face the door I believe she was standing to the left of the door.

Q To the left of the door?

A I believe so, yes.

Q So this means that the door opens from the left, she was standing by the left side of the door and this would mean that the door opens on the left-hand side?

A I don't know, Counselor. I don't know.

Q When the door was opened for this approximately five seconds you say you made an observation of Mr.Springer?

A That is correct.

Q During that five-second period of time or six-second period of time, what specifically did you observe Mr. Springer doing?

A I observed Mr. Springer standing beside a table or a counter-top directly behind the door and to the right of the door, inside. Directly behind and to the right of the door inside the apartment, that is.

Q Was this table-top in front of Mr. Springer or was it behind him?

A From my position at that time it was in front of Mr. Springer.

Q Mr. Springer was standing behind the table?

A From my position, yes, at that time.

Q Well, in relation to the d-or, Sergeant O'Boyle, was Mr. Springer standing behind the table or was he standing in front of the table?

A In relation to the door Mr. Springer was standing behind the table.

Q Would you describe the table to us?

A Yes. It was a circular structure that was approximately four feet tall, made of wood, possibly formica.

Q And at this point, this was prior to your second conversation with Mr. Springer, with Mrs. Springer rather, you had not reached the top of the steps?

A I had about reached the top of the steps, yes.

Q Didn't you previously testify that you were on the last few steps but you had not reached the top?

A That was what I mean when I state that I had about reached the top of the steps. I was on the last few steps, yes.

Q The last few steps, the last three, four'

A Two or three, possibly one, I don't recall.

Q Where were your brother officers at this time?

A Detective Wysocki was directly behind me and Detective Cassella and Sheehan, they were directly behind Wysocki.

Q Where wasthe youth at this time who opened up the

door?

A I don't know.

Q At this point, prior to reaching the top of the steps, you were looking in the apartment at an upward angle?

A In a somewhat upward angle, yes.

Q And this was for a five-second, six-second period of time?

A Between five and ten seconds possibly.

Q And Mrs. Springer was standing between you and the entrance of the apartment?

A No, sir.

Q She was not standing by the entrance of the apartment?

A She was standing by the door, by the entrance, yes.

Q She was standing by the door?

A By the door, yes.

Q Which is by the entrance of the apartment. By the doorway she was standing?

A That is correct, the door is the entrance to the apartment.

Q And all this time you were looking up at the apartment?

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A I was looking into the apartment.

Q You were looking in but at an upward angle?

A In a somewhat upward angle, yes.

Q What time of day or evening was this, Officer?

A This was approximately 8:15 p.m.

Q In the evening?

A Yes.

Q Were there overhead lights in the hallway?

A Yes, I believe there was.

Q When you say you believe there were, is there some question about it?

A It was bright. I didn't notice any lights but I remember that it was bright in the hallway.

Q You say it was bright but you didn't notice any lights there?

A I didn't look upwards, no.

Q Where was the illumination coming from?

A I don't know.

Q What type of building was this?

A It's a multiple dwelling, it's approximately, I believe, three stories high.

Q Would you say it is an older building or a newer building? Would you say it is older than 20 years old?

A No, it's a relatively new building.

Q Prior to entering this building, had you had the building under observation?

A No, sir.

Q Had you had any knowledge of where Mr. Spring was prior to entering that building?

A No, sir.

Q When you made the observation of Mr. Springer standing beyind that table at a somewhat upward angle, during that five-second period of time, what did you observe him do?

A I didn't observe him do anything.

Q So he was just standing there?

A That's correct.

Q Was he smoking a cigarette at that time?

A I don't know.

Q There then came a time when the door was shut by

Mrs. Springer?

A That's correct.

Q Sergeant, did you hear any conversation between Mr. Springer and Mrs. Springer at this time?

A Prior to the door being shut?

Q Yes.

A I overheard a conversation, but as to the substance of the conversation, I couldn't tell you what it was.

Q Was that between Mrs. Springer and Mr. Springer or was it between a third party in the apartment?

A Would you please repeat the question?

Q Was the conversation, whose substance you don't know what it was about, was it between Mr. and Mrs. Springer or between a third party or other people?

A It was between Mrs. Springer and Mrs. Springer.

Q Now, there came a time when you say Mrs. Springer shut the door?

A That's true.

A Then immediately thereafter, at this point you had reached the top of the steps?

A That's correct.

Q And you and your brother officers then broke the door down?

A I had a conversation with Mrs. Springer prior

to that.

Q With Mrs. Springer?

A That's correct.

Q Mrs. Springer?

A Mrs. Springer.

Q And then there came a time when you broke the door down?

A After I had the conversation with Mrs. Springer, there did come a time when I broke the door down.

Q For how long a period of time was that door shut before you entered the apartment?

A Approximately ten to twenty seconds.

Q Ten to twenty seconds?

A That's correct.

Q And you testified that upon entering the apartment you saw Mr. Springer in the bathroom?

A After I had a conversation with Detective Wysocki I saw Mr. Springer in the bathroom.

Q That was the first time-- well, let me rephrase that question.

After entering the apartment your first observation of Mr. Springer was when he was in the bathroom?

A That's correct.

Q Were you the first one in the apartment?

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A Detective Wysocki was the first one in the apartment.

Q And how long after that did you enter the apartment?

A One to two seconds, three seconds.

Q In other words, youall entered as a group?

A No. Only Detective Wysocki and I entered the apartment at that tpoint.

Q So you and Detective Wysocki entered the apartment together?

A Yes.

Q Within a second--

A That's correct.

Q And Detective Wysocki was the lead officer entering the apartment?

A Yes.

Q So you were right behind him when he entered the apartment?

A That's correct.

Q And it was at that point that the observation was made of Mr. Springer in the bathroom?

A Detective Wysocki observed Mr. Springer in the bathroom at that point, yes.

Q Where did you observe Mr. Springer?

A After I had a conversation with Detective Wysocki, I observed Mr. Springer in the bathroom.

Q Now, the door of that bathroom was shut, is that correct?

A I don't know.

Q Well, how far is the bathroom from the entrance to the apartment?

A I don't know.

Q Would it be fair to say that it is in excess of 20 feet?

A Yes. I believe so.

Q Now, after you and Detective Wysocki entered the apartment, you say Detective Wysocki informed you that Mr. Springer was in the bathroom?

A After Detective Wysocki entered the bathroom or approached the bathroom, then he informed me, yes.

Q Now, did you have the bathroom or the room called the bathroom in your line of sight at this time?

A No, sir.

Q Was it around the corner?

A It was to the right, in a hallway. It was to my right as I entered the apartment and up a hallway, a short hallway.

Q And at that point did Detective Wysocki ask

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Mr. Springer to come out of the bathroom or did you ask Mr. Springer to come out of the bathroom?

A As I was approaching the bathroom, Detective Wysocki was directing Mr. Springer to leave the bathroom, yes.

Q And did you observe all this taking place?

A I observed Mr. Springer leaving the bathroom, ye sir.

Q When Mr. Springer exited the bathroom, did he open up the door to come out?

A I don't recall.

Q Did you see Mr. Springer leave the bathroom?

A Yes. I did see him leave the bathroom.

Q At that point Mr. Springer was under arrest, is that correct?

MR. FORTUIN: I object to that, your Honor. That calls for a legal conclusion.

THE COURT: Sustained. It calls for a legal conclusion. He has no knowledge of whether Detective Wysocki arrested him in the bathroom - or do you know?

THE WITNESS: No, your Honor.

MR. SIEGEL: Let me rephrase the question.

Q You and Detective Wisocki went to that apartment for the purpose of arresting John Springer?

A That's correct.

Q Would that be a fair conclusion on my part?

A Yes, sir.

Q When Detective Wisocki ordered John Springer out of the bathroom, that is when Detective Wisocki placed him under arrest, when he walked out of the bathroom?

MR. FORTUIN: I object to that. When he placed him under arrest -- I don't know.

THE COURT: Did Detective Wisocki have his gun drawn?

THE WITNESS: Yes, your Honor. He had his gun drawn.

Q After Mr. Springer left the bathroom at the officer's direction, where did Mr. Springer go then?

A He remained directly outside the bathroom.

Q And did there come a time when Mr. Springer left the area outside the bathroom?

A Yes.

Q Was this at the direction of either you or Detective Wisocki?

A At my direction.

Q And was it then that John Springer was brought

into the kitchen?

A He was taken into the bedroom.

Q HE was taken into the bedroom?

A Correct.

Q Was that the bedroom directly adjacent to the bathroom or was that the bedroom opposite the bathroom?

A It was opposite the bathroom.

Q And for how long was Mr. Springer kept in that bedriom before he was moved out?

A He remained in there practically for two hours, while we remained in the apartment.

Q Two hours. Now, subsequent to that arrest, in conjunction with that arrest, did you determine or have you made any investigation to determine if in fact Mr. Springer resides in that apartment? Or is it in fact his wife's apartment?

MR. FORTUIN: I object to it, because I don't see the relevancy to this proceeding.

THE COURT: Well, I will permit it anyway.

Go ahead.

A I have not conducted any such investigation.

Q Do you know for a fact that that is Mrs. Springer apartment and not Mr. Springer's apartment?

A No. I do not know that for a fact.

Q At the time of this arrest, you said that a lady was in one of the bedrooms.

A That's correct.

Q What was her name?

A I do not know.

Q At the time of this arrest, did you make any notes contemporaneous -- you know, contemporaneous with this arrest?

A One of the arresting team members did make notes, shortly thereafter.

Q Did you make any notes?

A No, I did not.

Q Did you prepare any sort of a report in conjunction with this arrest?

A I didn't, no.

Q Do you know if a report was made?

A Yes. The arresting officer made an arrest report and other reports that are required.

Q Now, dropping back in time, just approximately five minutes before Mr. Springer was placed under arrest, you said that between the first and second conversation you had with Mrs. Springer, the door was opened a portion of the entranceway, and you observed John Springer standing behind the table; is that correct?

A That's correct.

Q And you were looking at a somewhat upward angle. That's --

A Yes. That's about correct.

Q Now, you testified that you made an observation as to something on top of that table?

A That's correct.

Q What specifically did you observe when the door was opened for that five-second period of time, on that table top?

A I observed a quantity of aluminum foil on the counter top or table top.

Q Well, are we talking now about the table top or the counter top?

A We are talking about the structure that was directly in front of John Springer.

Q Which has heretofore been described by you as a round, circular table?

A That's correct.

Q You saw a quantity of aluminum foil?

A That's correct.

Q Now, would it be fair to say that the aluminum foil was, instead of being laid flat, was up on its ends?

A I don't recall.

Q You don't recall, Officer?

A Will you repeat that question?

THE COURT: The question was, was the aluminum foil lying there flat, or was it in some other position, possibly up on its end?

THE WITNESS: Well, it was laying flat on the table, or maybe not completely flat, but it was laying --

Q Was there anything underneath the foil?

MR. FORTUIN: Your Honor, at this time I am going to object on the ground that it is just a general discovery session. It has nothing to do with the general legality of the seizure.

Q Was there anything between the tinfoil and the table top?

A I don't know.

Q You don't know?

A That's correct. I don't know.

Q At the time of your initial observation --

MR. SIEGEL: LEt me withdraw that question.

Q How long a distance is it from the top of the steps, just as you reached the top landing, the top of the landing, to the entrance of that apartment?

A Approximately five feet.

Q Five feet?

A Possibly. It could be seven. I don't recall exactly. I don't recall the exact distance.

Q How far inside the apartment was the table?

A Approximately another five feet.

Q Approximately?

A Approximately.

Q And you say that at that point you were approximately three steps from the top of the landing?

A I said possibly one, two or three steps from the top of the landing.

Q How far would you say you were from the top of the landing, in feet?

A From the top of the landing?

Q Yes.

A Approximately one foot, one and a half feet.

Q How large attable was this?

A It was approximately three or four feet in diameter.

Q Three or four feet in diameter?

A That's correct.

Q What portion of the table was exposed at the time when the door was opened?

A I don't understand the question.

Q What portion of the table was exposed, did you

see, when the doorway was open for that five-second period of time?

A I believe the --

Q Sargeant O'Boyle, as you remember --

A Yes.

Q -- how much was exposed? Not what you believe, but as you are sitting in that chair right now, how much do you remember was exposed?

A The complete table was exposed.

Q The complete table?

A As I remember, yes.

Q Well, Mrs. Springer was standing somewhat in the entranceway to the apartment. You have testified to that already. Was her body in any way covering part of that table from your view?

A No; it was not.

Q Did this door have a transom at the top of it?

A I don't know.

Q Now, you testified that before you had reached the top of the landing you observed a white powder, did you say, on top of the tinfoil?

A What appeared to be white powder.

(Continued on page 481.)

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Q How much of the powder was exposed, Officer?

A I don't know. I observed white powder.

Q When you say you observed white powder, where was this white powder located on the tinfoil?

A I believe the white powder was on the table.

Q It wasn't on the tinfoil?

A There was more than one piece of tinfoil on the table top.

Q You say there was more than one piece of tinfoil now?

A I originally testified that I observed tinfoil on top of the table.

Q At that point when you were on the second or third step you say you observed tinfoil?

A That is correct.

Q You couldn't distinguish whether it was one piece or a few pieces, or could you?

A Yes, I could.

Q You could distinguish it?

A That is correct.

Q How many pieces of tinfoil were you able to distinguish at that time?

A I don't recall the exact number of pieces that I observed at that time.

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Q Were the pieces together or were they separated on the table?

A They were separated on the table.

Q Was this powdery substance upon each of the tinfoils, each piece of the tinfoil, or just on one piece of the tinfoil?

A I observed this powdery substance on at least one piece of tinfoil. I also observed powdery substance on the table itself.

Q This was from your looking at an upward angle at the table you were able to tell there was powder on that table?

A That is correct.

Q Was there a sugar bowl on top of that table?

A I don't recall.

Q Would you recall if there was a napkin dispenser on that table?

MR. FORTUIN: I object to this. I don't see what possible relevancy it has.

MR. SIEGEL: It goes to the credibility of the witness.

THE COURT: You can answer it.

A I don't recall.

Q How close were the pieces of tinfoil to each

other on the table? Were they all together or were they separate and apart?

A The tinfoil was on various locations on the table.

I don't know how close they were to it.

Q You say you observed the white powdery substance on at least one?

A That is correct.

Q Where on the table was that one piece located?

A I don't recall its exact location on the table.

(Continued on page 484.)

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Q You don't recall its exact location on the table, is that your answer?

A That was my answer, yes.

Q There were other pieces of tinfoil on that table, is that correct?

A That is correct.

Q Would it be fair to say you don't know where they were located on the table?

A They were on the counter-top. I don't know their exact location on the counter-top.

Q Are we talking about another location completely or are we still talking about the table?

A We are still talking about the table.

Q From that location where you were, you testified that you observed a white powdery substance on at least one of these pieces of tinfoil but you don't know where on the table it was, is that correct?

A That's correct.

Q How was this white powdery substance on the tinfoil, was it in a cone or spread out thin?

A I don't recall.

Q You don't recall?

A I don't recall.

Q Do you recall how much of the white powdery

substance was exposed over the tinfoil?

A It appeared to be approximately one inch, an inch and a half high. Approximately one inch or possibly one inch and a half high.

Q Approximately one inch?

A An inch to an inch and a half.

Q You were now at a position of approximately 12 to 15 feet away?

A Possibly, yes.

Q Possibly a little further?

A Possibly closer.

Q You were looking up at an angle?

A At a slight angle, yes.

Q When you say it was in a cone, was that your testimony?

A No, I didn't testify to that.

Q You say it was an inch and a half or an inch high. How large of a piece of tinfoil was this?

A I don't know.

Q Was the white powder completely flat from your appearance or bumpy?

A It didn't appear to be completely flat.

Q During this five-second period of time when you had this under observation, not after you entered the

apartment, but before, you say there was some bumps in the white powdery substance?

A I could not determine at that point whether there was bumps in the white powdery substance or not.

Q From that distance, Officer, could you tell me the difference in appearance between this white powdery substance and granulated sugar; that is, at this distance of 15 feet away?

A I don't think so. I don't think I could determine whether it was granulated sugar or something else.

MR. SIEGEL: I have nothing further of this witness, your Honor.

MR. FORTUIN: I just have one question.

REDIRECT EXAMINATION

BY MR. FORTUIN:

Q In your experience as a narcotics officer, have you ever seen tinfoil used?

A Yes, I have.

Q For what purpose is it commonly used?

A It is commonly used to wrap cocaine.

Q And any other substances?

A Possibly heroin.

Q And heroin and cocaine are white powders?

A That is correct.

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MR. FORTUIN: No further questions.

RECROSS-EXAMINATION

BY MR. SIEGEL:

Q Sergeant O'Boyle, has there ever come a time within the past five years-- this is not a facetious question-- that you have been in a kitchen and the answer to that would be yes?

A Yes.

Q During the course of that time did you ever have occasion to use tinfoil in that kitchen; that is, to wrap food?

A Me personally, no. Not that I can recall.

THE COURT: All right. Step down.

(Witness excused.)

MR. FORTUIN: That is the government's direct case, your Honor.

THE COURT: Do you want a couple of minutes to put your notes together?

MR. SIEGEL: If it may please the Court, your Honor, this morning I explained to the Court that I found a location of a witness who was present at this time. I have been informed that the witness will be available on Wednesday. May I ask a continuance in this hearing until Wednesday?

THE COURT: Is it only going to be for one witness?

MR. SIEGEL: I would have to say it would be approximately three witnesses, your Honor.

THE COURT: Three witnesses?

MR. SIEGEL: Yes.

THE COURT: Wednesday morning, gentlemen.

I assume you will be back tomorrow, is that correct?

MR. SIEGEL: Yes, sir.

THE COURT: We will adjourn until tomorrow morning at ten o'clock.

Mr. Curran, I would like to see you and Mr. Lopez, I would like to see you.

MR. PHILLIPS: Mr. Curran is not here.

THE COURT: I will try you, Mr. Phillips.

(Hearing adjourned to Tuesday, January 15, 1974 at 10:00 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Martin O'Boyle	444	456		

EXHIBIT INDEX

Court	Identification	In Evidence
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